

Asphalt manufacturing equipment does not qualify for the Manufacturing Machinery and Equipment Exemption unless that machinery and equipment is used primarily (over 50 percent of the time) in the manufacturing of asphalt for wholesale or retail sale. Asphalt manufacturing equipment used to manufacture asphalt which the owner primarily will use to satisfy his own obligations under a construction contract does not qualify for the exemption. See 86 Ill. Adm. Code 130.330. (This is a GIL).

July 29, 1999

Dear Mr. Xxxxx:

This letter is in response to your letter dated July 8, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

We are purchasing an asphalt plant for the manufacturing of asphalt road materials. We are contractors. The material would be used by us as well as for sales to other contractors. We would use more than 50% of the material for our own use. However, most of the material produced and used by us would be used on tax exempt projects, ie. Federal, State, County and municipal roadways.

Are we required to pay sales tax on the purchase of the asphalt plant?

Please respond at your earliest convenience.

The production of asphalt for wholesale or retail sale constitutes a manufacturing process. The Department administers a Manufacturing Machinery and Equipment Exemption that is described in the enclosed copy of 86 Ill. Adm. Code 130.330. This exemption extends to machinery and equipment used primarily (over 50 percent of the time) in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease.

However, a different situation exists when the manufacturer of the asphalt also permanently affixes the asphalt to real estate. In that case, the asphalt manufacturer is acting as a construction contractor. See the enclosed copy of 86 Ill. Adm. Code 130.1940. The machinery that the asphalt manufacturer uses to produce asphalt is not being used in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease. The asphalt manufacturer in that case is acting as a construction contractor and uses the asphalt itself, instead of making a retail or wholesale of it. If an asphalt manufacturer does not use its asphalt production equipment over 50 percent of the time in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease, that equipment will not qualify for the Manufacturing Machinery & Equipment Exemption.

July 29, 1999

The fact that some or even all of the asphalt that is being used by the asphalt manufacturer is being incorporated into property owned by an exempt entity, such as governmental, charitable, religious, or educational entity, does not affect this analysis. The reason is that the asphalt manufacturer is still the user of the asphalt even if its construction project is with an exempt entity.

Please note that contractors owe Use Tax on the cost price of the tangible personal property which they permanently affix to real estate. See the enclosed copies of 86 Ill. Adm. Code 130.1940 and 130.2075 regarding the tax liabilities of contractors in Illinois. When an asphalt producer also acts as a construction contractor, it owes Use Tax on the cost price of the asphalt. The cost price would be the cost price of the materials that it uses to make the asphalt, since it produces the asphalt itself. An exception to this rule is that contractors entering into contracts with entities possessing exemption numbers ("E" numbers, which are issued to governmental bodies and exclusively charitable, religious or educational organizations) can make tax-free purchases of materials that they will incorporate into real estate owned by the exempt entity. If the contractor is making purchases of such materials, the contractor must provide the supplier with the exempt group's exemption number, the date on which the contract with the exempt group was entered into, and the exempt entity's name and address. See Section 130.2075(d)(4).

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk
Enc.